IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 194 OF 2004

Union of India and Ors. ... Petitioners

Versus

Shri. D.A. Deshpande ... Respondents

Mr. D.A. Dubey i/by T.C. Kaushik for Petitioners.

Mr. P.A. Prabhakaran with Mr. S.G. Pillai for R. No. 1.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : JANUARY 31, 2006

P.C.

. The Petitioners have approached this court against the order dated 16.10.2002 whereby the Original Application filed by the Respondent was allowed and the recovery made from him was directed to be refunded. The principal contention urged on behalf of the Petitioners are as under :

(a) That the matter pertains to the provisions of the Public Premises (Eviction) Act and consequently the tribunal would have no jurisdiction.

(b) That the findings of the tribunal that there was no subletting are perverse and on both these counts the

order is liable to be set aside.

. In so far as the first contention is concerned, we find that no proceedings were initiated against respondent under the provisions of the Public Premises (Eviction) Act. On the contrary, the findings are recorded on the basis that the Petitioner had misused the premises allotted to him. In other words, there is breach of service conditions and recovery from the salary of the Petitioner. In our opinion, this would be a matter touching the service conditions and consequently the Central Administrative Tribunal had jurisdiction to hear and entertain the Original Application. On that count itself, the first contention has tobe rejected.

. We then come to the second contention as to whether the findings recorded that the premises were not sublet are perverse warranting interference by this court. In the instant case, we find that based on the material on record, it was possible to come to the conclusion that the Respondent was not residing in the premises. The matter however, does not end there. It is the case of the Petitioner that the Respondent had permitted one

Shri. Pandey to reside in the premises and defence of the respondent was that the said Mr. Pandy was a friend who had been allowed only to occupy the premises as a visitor. From the order, it is clear that there was no gas connection. In our opinion that would be an indication that the premises were not being regularly habituated. No panchanama has been placed to show that there were cooking utensils or other material which would indicate that said Mr. Pandey was occupying the premises. The onus of proving that the premises were sublet would be on the Petitioner and if the Petitioner had procured any material indicating that Mr. Pandey was occupying the premises as resident, then the onus would have shifted on the respondent to prove otherwise. In the instant case, there is no such material. The tribunal has recorded a finding of fact that occupation by Mr. Pandey was not for the purpose of residence. We do not find that the findings are perverse in as much as the learned counsel for the Petitioner has been unable to show before us any material to indicate that either the tribunal has ignored the evidence which was on record or that no person could have taken a view as recorded by the tribunal. Once that be the case, second contention has also to be rejected. For all the

aforesaid reasons, rule discharged. No order as to costs.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)